



FISCAL MEMORANDUM

SB 2458 - HB 2661

March 15, 2022

SUMMARY OF BILL AS AMENDED (015804): States that a pharmacy benefits manager (PBM) may reimburse a contracted pharmacy for a prescription drug or device an amount that is less than the actual cost to that pharmacy if the PBM establishes a clear defined process through which a contracted pharmacy may contest that the reimbursement received was less than the actual cost. States that if a PBM contests the actual cost incurred by the pharmacy, the pharmacy has the right to designate a pharmacy services administrative organization (PSAO) or other agent to handle its appeal. Requires a PBM to reimburse the pharmacy at least the actual cost for the drug or device if the pharmacy prevails in the appeal. Requires a PBM to pay a dispensing fee not less than the amount paid by TennCare.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures - \$2,803,200/FY22-23 and Subsequent Years

Increase Federal Expenditures - \$273,800/FY22-23 and Subsequent Years

Increase Local Expenditures – \$306,900/FY22-23 and Subsequent Years*

Assumptions for the bill as amended:

- Any sanctions that a PBM or covered entity is subjected to will be able to be handled within existing resources and will not create a significant increase in the court system.
- The provisions of the proposed legislation will not create any fiscal impact to the Department of Commerce and Insurance.
- The proposed legislation states that the professional dispensing fee (PDF) must not be less than the amount paid by the TennCare program, which has an average cost of \$9.814. This will lead to a required PDF increase for CoverRx of \$6.814 per claim and for CoverKids of \$9.314 per claim, as current average PDF payments for such programs are \$3.00 and \$0.50, respectively.
- The proposed legislation states that a PBM must pay a PDF not less than the amount paid by TennCare if the pharmacy's annual volume is less than 65,000 prescriptions per year.
- CoverRx had about 40,945 claims in the past year filled at applicable pharmacies. Therefore, assuming this remains consistent, this would create an increase in state expenditures of \$278,999 (40,945 x \$6.814).

- CoverKids had about 11,870 claims in the past year filled at applicable pharmacies. Therefore, there would be a recurring increase in expenditures of \$110,557 ($11,870 \times \9.314). Since CoverKids is a Tennessee Children's Health Insurance Program, it is matched at a 76.315 percent federal rate. Therefore, this would lead to a recurring increase in state expenditures of \$26,185 ($\$110,557 \times 23.685\%$) and a recurring increase in federal expenditures of \$84,372 ($\$110,557 \times 76.315\%$).
- The Department of Finance and Administration, Benefits Administration's current PBM contract includes dispensing fees that are less than the average TennCare dispensing fee of \$9.814. According to the department, the provisions of the bill will result in an increase of \$9.08 per prescription filled. The total prescriptions filled that will be affected by this are estimated to be 375,607; therefore, the increase in expenditures to the state employee plan, the local education plan, and the local government plan are estimated to be \$3,410,512 ($375,607 \times \9.08).
- Based on plan percentages and the contributions by state, local and federal governments, the increases in expenditures are as follows:
 - Increase in state expenditures = \$1,778,033;
 - Increase in federal expenditures = \$189,406; and
 - Increase in local expenditures = \$306,946.
- Local expenditures above only include those of local governments opting to participate in the Local Government Plan. The fiscal impact to other local governments is unknown; therefore, local government expenditures are estimated to exceed \$306,946.
- The total increase in state expenditures as a result of the proposed legislation is \$2,083,217 ($\$278,999 + \$26,185 + \$1,778,033$) in FY22-23 and subsequent years.
- The total increase in federal expenditures as a result of the proposed legislation is \$273,778 ($\$84,372 + \$189,406$) in FY22-23 and subsequent years.
- The total increase in local expenditures as a result of the proposed legislation is \$306,946 in FY22-23 and subsequent years.

IMPACT TO COMMERCE OF BILL AS AMENDED:

Increase Business Revenue - \$2,663,900/FY22-23 and Subsequent Years

Assumptions for the bill as amended:

- The proposed legislation will lead to a recurring increase of \$2,663,941 ($\$2,083,217 + \$273,778 + \$306,946$) in fees collected by certain professional dispensers.
- Additional commerce impacts may be realized; however, due to many unknown variables, such impacts cannot be quantified with reasonable certainty.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The script is cursive and fluid.

Krista Lee Carsner, Executive Director

/cd